

REMARKS

Claims 1-51 are pending in this application and were subject to a restriction requirement. Claims 2, 4, 6-47 and 50 are withdrawn from consideration by election filed on July 21, 2004. Claims 1, 3, 5, 48, 49, and 51 stand rejected. Claims 1, 3, 48, and 51 are amended herein. Support for these amendments can be found in Figures 17-19 of the application. Claim 5 is cancelled without prejudice. No claim is objected to.

Objection to the Specification

The specification is objected to for containing embedded hyperlinks at page 20 and 29. Applicants have amended the specification to delete these embedded hyperlinks herein, thus, rendering this objection moot.

35 U.S.C. § 102

Claims 1, 3, 48 and 49 stand rejected as being anticipated by U.S. Patent No. 6,239,267 (hereinafter "the '267 patent"). Specifically, the Examiner alleges that the '267 patent teaches a human vanilloid receptor in column 9, lines 8-9. Applicants respectfully submit that a single prior art reference anticipates a claimed invention only if it identically shows every element of the claimed invention. *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Applicants amend claims 1 and 3 herein to recite either "SEQ ID NO:4" or "SEQ ID NO:5," respectively. Support for these amendments can be found in Figures 17-19 of the application. Applicants also amend claim 48 herein to depend from claim 3. As the '267 patent does not disclose SEQ ID NO:4 and SEQ ID NO:5 of the instant application, Applicants respectfully submit that this reference does not disclose each and every element of the claims as amended.

Applicants respectfully submit that in view of the forgoing remarks and the claims as amended, Applicants have overcome the Examiner's rejection under 35 U.S.C. § 102(b) and that this rejection should be withdrawn. As claim 49 depends from amended claim 48, Applicants respectfully submit that this claim is also in condition for allowance and respectfully request withdrawal of the rejection of this claim.

35 U.S.C. § 112, first paragraph

Claims 1, 3, 48, 49, and 51 stand rejected under 35 U.S.C. § 112, first paragraph, allegedly because the specification "while being enabling for the polypeptide SEQ ID NO:5 and that of the prior art, does not reasonably provide enablement for all human vanilloid receptors, all VR3 polypeptides and variants thereof." Specifically the Examiner alleges that the Applicants have "not described the characteristics of this polypeptide so that one of skill in the art could predictably identify other polypeptides that would have the same distinguishing characteristics."

Applicants herein amend claims 1 and 3 to recite SEQ ID NO: 4 and 5, respectively. Furthermore, Applicants herein amend claims 1, 3, 48, and 51 to no longer recite the phrase "variant thereof." Finally, Applicants amend claim 48 to depend from amended claim 3. Applicants respectfully submit that in view of the forgoing remarks and the claims as amended, Applicants have overcome the Examiner's rejection under 35 U.S.C. §112, first paragraph and that this rejection should be withdrawn. As claims 49 and 51 depend from claim 3, either directly or indirectly, Applicants respectfully submit that these claims are also in condition for allowance.

Claims 48 and 49 also stand rejected under 35 U.S.C. §112, first paragraph for allegedly lacking enablement. The Examiner concedes that hVR3 is found in such tissue as trachea, prostate, placenta, kidney, and pancreas. However, the Examiner alleges that "there is no information on how hVR3 is associated with pain due to such disorders as rheumatoid arthritis or irritable bowel syndrome." Applicants respectfully submit that the specification recites that northern blot analysis indicated a 3.8 kB polynucleotide (hVR3) in the following exemplary tissue samples: trachea, kidney, pancreas, prostate, placenta, bone marrow, adrenal gland, lymph node, spinal cord, thyroid, stomach, lung and liver; see, for instance, page 30, lines 1-5 of the specification. Furthermore, Applicants demonstrate within the specification that hVR3 has at least 49% sequence homology with rat VR1; see, page 27, lines 21-27. In addition, the specification is replete with examples of hVR1 modulation with agonists and antagonists to hVR1, such as capsaicin, a known vanilloid agonist and pro-inflammatory stimulatory in the periphery. See, for example, Examples 7a-c of the specification. Applicants respectfully submit that based on the homology of rat VR1 and hVR3 presented in the specification and the association of hVR1 with desensitization to capsaicin also presented in the specification, one of skill in the art would expect hVR3 to also be associated with the treatment of certain disorders wherein pain may be caused by inflammation.

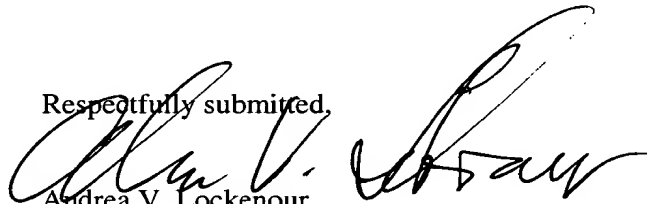
Claims 1, 3, 48, 49, and 51 also stand rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with written description. Specifically, the Examiner alleges that the specification does not convey to the skilled artisan that Applicants were in possession of the invention at the time the application was filed. More specifically, the Examiner alleges that variants of hVR3 "could vary substantially in length and composition." Applicants herein amend claims 1, 3, 48, and 51 to no longer recite the phrase "variant thereof." Finally, Applicants amend claim 48 to depend from amended claim 3. Applicants respectfully submit that in view of the forgoing remarks and the claims as amended, Applicants have overcome the Examiner's rejection under 35 U.S.C. §112, first paragraph and that this rejection should be withdrawn. As claims 49 and 51 depend from claim 3, either directly or indirectly, Applicants respectfully submit that this claim is also in condition for allowance.

35 U.S.C. § 112, second paragraph

Claims 1, 3, 5, 48, 49, and 51 stand rejected under 35 U.S.C. § 112, second paragraph for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically, the Examiner alleges that claims 1, 3, 48, 49, and 51 are indefinite in the recitation of "variants" and that no definition of the term "variant" is provided in the specification. Furthermore, the Examiner alleges that claim 5 is indefinite for referencing a figure. Applicants respectfully submit that a definition of "variant" is provided within the specification at page 9, line 32 through page 10, line 8. However, in an effort to advance prosecution, Applicants herein amend claims 1, 3, 48 and 51 to no longer recite the phrase "variant thereof." Finally, Applicants amend claim 48 to depend from amended claim 3. In addition, claim 5 is cancelled herein, thus, rendering rejection of claim 5 moot. As claims 49 and 51 depend from claim 3, either directly or indirectly, Applicants respectfully submit that this claim is also in condition for allowance. Applicants respectfully submit that in view of the forgoing remarks and the claims as amended, Applicants have overcome the Examiner's rejection under 35 U.S.C. § 112, second paragraph and that this rejection should be withdrawn.

Applicants reserve the right to prosecute, in one or more patent applications, the claims to non-elected inventions, the cancelled claims, the claims as originally filed, and any other claims supported by the specification. Applicants thank the Examiner for the Office Action and believe this response to be a full and complete response to such Office Action. Accordingly, favorable reconsideration and allowance of the pending claims is earnestly solicited. If it would expedite the prosecution of this application, the Examiner is invited to confer with the Applicants' undersigned attorney.

Respectfully submitted,



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